SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM 1926.

No. 358.

ALBERT OTTINGER, as Attorney General of the State of New York,
Appellant,

vs.

THE BROOKLYN UNION GAS COMPANY.

While answering the argument of appellant that the proper rate base in this cause is the amount found in the case of *Newton, Attorney General* v. *Brooklyn Union Gas Co.*, 258 U. S. 604, plus additions since 1919, counsel for appellee was granted permission to file an abstract from Defendant's Exhibit 28 (R., 2141, side folio pages 3257-3264).

This Exhibit is the report of the appellee to the New York State Tax Department for the year 1922, the portion of which appellee now abstracts being dated February 28, 1923.

It was offered in evidence by the Attorney General (R., 598) during the cross examination of John T. White, who explained the method of preparation as to mains and services (R., 596 *et seq.*) and that it represented so-called Historical Cost.

We extract the following tabulation (R., 2141, side folio 3257):

THE BROOKLYN UNION GAS COMPANY

Schedule of Tangible Gas Property Outside of Streets, Highways and Public Places

Land	$4,718,399.00	
Plant Apparatus	9,983,523.00	
Holders	4,531,298.00	
Buildings	5,868,168.00	$25,101,388.00
Services outside of Streets	$1,819,576.07	
Gas Tools and Implements	130,344.70	
Meters and Meter Cocks and Connections	6,683,483.93	
Office Furniture and Fixtures	248,280.14	
Horses, Wagons and Harness	226,532.53	9,108,217.37
		$34,209,605.37
Materials and Supplies		2,083,188.27
		$36,292,793.64
Mains in Streets as of Dec. 31, 1922 (Side folio 3263)		9,955,496.05
Services in Ground Dec. 31, 1922 (Side folios 3264-3288)		3,639,152.15
These items total		$49,887,441.84
Additions since Dec. 31, 1922 (Plffs. Ex. 255, R. 1934)		
Fixed Capital 1923...	$52,894,897.78	
Fixed Capital 1922...	48,396,054.37	4,498,843.41
		$54,386,285.25
Deduct 10% working for subsidiary companies		5,438,628.52
		$48,947,656.73

The Exhibit contains no amount for working capital which the Master (R., 117) and Court (R., 216) fixed at $5,000,000.

Respectfully submitted,

Cullen & Dykman,
Solicitors for Appellee.
177 Montague Street,
Brooklyn, New York.

William N. Dykman,
Jackson A. Dykman,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

Nos. 358, 365.—October Term, 1926.

Albert Ottinger, as Attorney General of the State of New York, Appellant, 358 *vs.* The Brooklyn Union Gas Company.	Appeals from the District Court of the United States for the Eastern District of New York.
Albert Ottinger, as Attorney General of the State of New York, Appellant, 365 *vs.* Kings County Lighting Company.	

[November 29, 1926.]

Mr. Justice McReynolds delivered the opinion of the Court.

Separate suits were begun by appellees in the United States District Court, Eastern District of New York, against the Public Service Commission and the Attorney General of that State. They sought injunctions against enforcement of the Act of June 2, 1923, c. 899, Laws of New York 1923, by which the Legislature directed that gas of six hundred and fifty British thermal units should be sold at not more than one dollar per thousand feet. Prior to June 2, 1923, under orders of the Commission, the Brooklyn Union Gas Company had been charging one dollar and fifteen cents and the Kings County Lighting Company one dollar and thirty cents per thousand feet for gas of five hundred and thirty-seven British thermal units.

The causes were referred to different masters. They took much evidence, and each reported that the rate prescribed by the Legislature would yield less than five per centum upon the fair value of the complainants' property devoted to public use. With some exceptions, not now important, these reports were approved and the court adjudged the statute confiscatory and therefore invalid. Also, that it was unreasonable and invalid in respect of the

standard of six hundred and fifty British thermal units. 7 Fed. (2d) 192, 628.

The Commission declined to ask for an appeal to this court. The Attorney General, upon petitions which allege "that in substance the decree restrains the defendants from enforcing in any way Chapter 899 of the Laws of 1923 of the State of New York and declares that said statute violates or is in contravention of Section 10 of Article I and of the Fourteenth Amendment of the Constitution of the United States," sued out broad appeals and has presented many assignments of error—one hundred and seven in No. 358, and twenty-one in No. 365. But we find no reason whatever advanced by him in brief or oral argument which would justify reversal of either decree.

The statute was clearly confiscatory in effect and there was no necessity for the District Court to consider any other objection thereto. We have not done so.

The decrees will be modified by excluding therefrom such parts as adjudge the statute invalid for any reason except conflict with the Fourteenth Amendment because confiscatory in effect. Thus modified, both are affirmed. All costs will be taxed against appellant.

Mr. Justice BRANDEIS concurs in the result.

A true copy.

Test:

Clerk, Supreme Court. U. S.